Supreme Court of the United States

October Term, 1954
No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF RESPONDENT

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vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF RESPONDENT

Constitutional and Statutory Provisions Involved

In addition to the Jones Act, 46 U. S. C. § 688 and the Florida Statutes Section 733.16, set forth in full at pages 2 and 3 of Petitioners' brief, there is here involved Art. I, Sec. 8, cls. 10, 11, 18 and Art. III, Sec. 2 of the Constitution of the United States and the Federal Employers' Liability Act, 45 U. S. C. § 51, *et seq.*

Constitution of the United States

ARTICLE I

Section 8. Clauses 10, 11, 18.

> "To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;"
>
> "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;"

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

ARTICLE III

Section 2.

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime, Jurisdiction; * * * "[1]

Statement

The M/V "Wingate", a motor vessel, was owned and operated by H. C. Farrington, Sid Cox and another, all citizens of the United States and residents of the State of Florida. The owner employed a crew which included H. C. Farrington, master and part owner, and James Dean, seaman. On or about December 22, 1949, while on the high

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[1] 46 U. S. C. § 688, authorizing recovery for injury to or death of a seaman is valid legislation under admiralty powers of the federal government. *Panama Agencies Co.* v. *Franco*, C. C. A. Canal Zone 1940, 111 F. (2d) 263.

Control of Congress over maritime law is derived from Art. I, § 8, cls. 10, 11, 18 of the Constitution, conferring general power to make all laws necessary and proper for the carrying into execution all other powers vested by the Constitution in the United States government and Art. III, § 2, extending judicial power to cases of admiralty and maritime jurisdiction, and not from the commerce clause of the Constitution, Art. I, § 8, cl. 3. *Stoffel* v. *W. J. McCahan Sugar Refining & Molasses Co.*, D. C. Pa. 1929, 35 F. (2d) 602, affd. 41 F. (2d) 651.

seas, the vessel foundered and was lost with result that H. C. Farrington and James Dean lost their lives by drowning at sea. Sid Cox, another part-owner of the vessel died (of causes bearing no relation to the diaster) in January 1951.

Arthur Roth, as administrator of the Estate of James Dean, commenced an action for wrongful death under the Jones Act, 46 U. S. C. § 688, in the United States District Court for the Southern District of Florida in October 1952 (within 3 years after the disaster) against Bessie B. Cox and John G. Thompson as Administrators of the Estate of Sid Cox and Henrietta A. Farrington and Howard C. Farrington as Distributees of the Estate of H. C. Farrington.

The defendants moved for summary judgment. The District Court granted the motion and dismissed the complaint. No opinion was written by the Court. Upon appeal, the United States Court of Appeals for the Fifth Circuit reversed, Chief Judge Hutcheson dissenting. Re-hearing was denied. Opinion of the United States Court of Appeals is reported in 210 F. (2d) 76. Petition for writ of certiorari was granted June 7, 1954.

Issues Presented

1. Does an action on behalf of a seaman-employee against the estate of a United States citizen-employer-shipowner survive upon the death of the tort-feasor, who was the citizen-employer-shipowner?

2. Can a procedural State statute involving probate claims dilute and impair a substantive Federal right granted by Congress pursuant to its Constitutional powers?

POINT I

Substantive rights created by federal statute are entitled to enforcement by our federal courts and cannot be diluted, curtailed or eliminated by procedural technicalities or prerequisites created by State Laws.

The Respondent's action is predicated on the Jones Act which embodies a three year Statute of Limitations.[2] The Jones Act incorporates by reference all the provisions of the Federal Employers' Liability Act.[3]

Being substantive in nature, the right to bring an action under the Jones Act within three years cannot be diluted, shortened or extinguished by any procedural State Statute. Our Courts have uniformly held that the three year period of time within which to commence an action

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[2] 46 U. S. C. § 688 gives a seaman-employee (or his representatives in case of seaman's death) a right of action, founded on negligence against the employer-owner of the vessel, and by incorporation of the Federal Employers' Liability Act, must be commenced within three years after the date of accident.

> **"45 U. S. C. § 56. Actions; limitations; concurrent jurisdiction of courts.**
>
> No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

[3] 45 U. S. C. §§ 51-60, which, by section 57, provides for survival of an action after the death of the tort-feasor.

45 U. S. C. § 57 reads as follows:

> **"§ 57. Who included in term 'common carrier.'**
>
> The term 'common carrier' as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier. Apr. 22, 1908, c. 149, § 7, 35 Stat. 66."

See: *Engel* v. *Davenport*, 271 U. S. 33;
Port v. *Litolff*, 103 F. (2d) 302.

under the Jones Act cannot be altered under any circumstances.[4]

We are here concerned with the question of whether an action under the Jones Act survives upon the death of the employer-owner tort-feasor. The question has been answered in the affirmative in the case at bar by the Court

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[4] The death of respondent's decedent James Dean, a seaman-employee, occurred on December 22, 1949. There is no dispute that the Jones Act three year Statute of Limitations governed respondent's time to commence action from December 22, 1949, until January 1951, the date of death of Sid Cox, employer-owner. If this action had been commenced prior to January 1951, the District Court concededly could not have granted summary judgment for failure to comply with the eight month "non-claim" probate Statute of Florida (Sec. 733.16, Florida Statutes) since the question could not have arisen as the employer-owner was alive. However, because of circumstances, action was not commenced until October 1952, after the eight month claim period expired, but before the expiration of the three year statute of limtations of the Jones Act.

The Jones Act period of limitation will not be extended by claimant's disability to sue because of infancy or insanity or by delay occasioned by fraud of defendant, and defendant cannot waive defense thereunder of limitations.

See: *Osbourne* v. *U. S.*, 164 Fed. (2d) 767.

The time limitation of three years established by F. E. L. A. 45 U. S. C. § 56 is a substantive part of plaintiff's cause of action.

See: *Osbourne* v. *U. S., supra*;
Ran v. *Atlantic Refining Co.*, 87 F. Supp. 853.

Period of limitation under Jones Act will control the time for bringing suit regardless of state statutes of limitation.

See: *Osbourne* v. *U. S., supra.*

below on the basis of State law.[5] The United States Court of Appeals for the second circuit in the case of *Nordquist* v. *United States Trust Co. of New York*, 188 F. (2d) 776 has answered this very same question, also in the affirmative, on the basis of Federal law—the Jones Act.[6]

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[5] *Roth* v. *Cox*, 210 F. 2d 76, at page 79:

"[2-4] In the absence of some specific provisions as to the survivability of the causes of action which the statute authorizes the statute must be measured in the light of the common law rule of survival."

* * *

"It follows that state Legislatures are competent to enact survival statutes which may be enforced as a common-law remedy. While it may be true that admiralty may not enforce the remedy, even by libel in personam, yet it is not an encroachment on admiralty jurisdiction because it is excepted from that jurisdiction by the savings clause. Under the common law of Florida as modified by the statutes of the state a cause of action for a tort survives the death of the tort-feasor and may be maintained against his personal representative.[3]

[3] *Waller* v. *First Savings & Trust Co.*, 1931, 103 Fla. 1025, 138 So. 780; F. S. A. sec. 45.11."

[6] *Nordquist* v. *United States Trust Co. of New York*, 188 F. 2d 776:

"[1, 2] The rule that suits *ex delicto* brought in admiralty abated with the death of the tort-feasor was before the Supreme Court in Just v. Chambers, 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There Chief Justice Hughes, writing the opinion of the court said in a footnote at page 387 of 312 U. S., at page 691 of 61 S. Ct. that: 'The rule of the non-survival of a cause of action against a deceased tort-feasor has but a slender basis in admiralty cases in this country.' But the decision in Just v. Chambers went on the ground that a statute of the State of Florida, within whose territorial waters the accident happened, preserved the plaintiff's cause of action against the deceased tort-feasor for negligent injury, since the Florida act was not inconsistent with the general principles of the maritime law. The Supreme Court accordingly permitted recovery in admiralty. We do not think that the dictum quoted from the footnote

[6] (Continued)

of Chief Justice Hughes can be taken to have reversed the unbroken, though slender line of authority which he cited to the effect that such suits do not survive under the maritime law where it is not modified by some statute. Therefore, until the Supreme Court should rule to the contrary it would seem that suits brought in admiralty to recover for wrongful death would abate as at common law in the absence of a survivorship statute. Because of what we have come to believe was an implied survivorship provision in the Jones Act we are convinced that our decision in The Miramar, supra, in so far as it construed that Act as not altering the above rule should not be followed, although it must be conceded that survival of actions against the estate of a deceased tort-feasor causing wrongful death are not specifically provided therein. The Act provides that '* * * all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *.' [46 U. S. C. A. § 688] to actions brought under it. The Federal Employers' Liability Act, 45 U. S. C. A. §§ 51-60, made applicable to seamen by the Jones Act provides for survival in all cases arising under it. Section 59 covered the situation where the injured party died, and § 57, while not in terms providing for survvial defines a 'common carrier' subject to suit as including 'receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.' That definition was sufficient to prevent the abatement of any death action arising out of the operation of a railroad since railroads are continued in operation despite such corporate disasters as bankruptcy and receivership which are analogous to the death of an individual. Failure to imply a survivorship provision in the Jones Act in such a situation as the one before us does violence to the expressed policy of that Act by depriving seamen of any remedy where the tort-feasor has died, whereas a railroad employee would not be under the same disability because the exact situation could not arise since the railroad corporation would survive in some guise that would be subject to suit.

[3] Were such a situation presented with any frequency we might be constrained to leave its correction to the Congress for

We humbly suggest that the Jones Act takes precedence but that the Florida Survival Statute, Section 45.11, as interpreted by the Court below, be considered in *pari materia* therewith.[7]

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[6] (Continued)

if there could be any fair doubt that the omission of a survival proviso was intentional, it would be beyond our power to supply it. But this appears to be only the third litigated case where survivorship against the estate of the tort-feasor has been asserted and recovery was allowed under a state statute in one of the preceding two, Just v. Chambers, supra. Where the frustration of the clear purposes of the Act is so patently the result of a failure to foresee the consequences of a seldom recurring situation, the courts in this strictly limited sphere have never been inclined to let the plaintiff go remediless. E. g., Cabell v. Markham, 2 Cir., 148 F. 2d 737, affirmed 326 U. S. 404, 66 S. Ct. 193, 90 L. Ed. 165; Securities and Exchange Commission v. United States Realty & Improvement Co., 310 U. S. 434, 60 S. Ct. 1044, 84 L. Ed. 1293; Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 332, 59 S. Ct. 191, 83 L. Ed. 195; Rector etc. of Holy Trinity Church v. United States, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226. We, therefore, read into the Jones Act the omitted survival proviso and remand the cause for a trial upon the merits."

[7] The Second Circuit opinion finds an implied provision in the Jones Act that the cause of action survives against a deceased tort-feasor while the Fifth Circuit reasons that the cause of action under the Jones Act survives by way of the Florida Survival Statute providing for survival of actions which implements and augments the rights granted. The Jones Act does not explicity and in so many words state that the cause of action survives against a deceased tort-feasor. However, in addition to the reasoning of the Second and Fifth Circuits, Sec. 57 of F. E. L. A. expressly provides for such survival of action. See footnote 3.

In making reference to the Florida Survival Statute the Respondent respectfully points out that the Survival Statute is separate, apart and wholly distinct from the Florida "non-claim" statute.

The question involved concerns remedial legislation and therefore merits liberal construction by this Honorable Court.[8]

Since the substantive right of survival of action under the Jones Act exists, whether by supplemental state statute (Florida Survival Statute) or by implication or by express incorporation by reference, a state procedural statute (Florida "non-claim" statute) cannot dilute this substantive right by reducing the statutory three year limitation period to a period of eight months commencing at an indefinite time after first publication of notice to creditors of the deceased employer-owner. This Court has repeatedly rejected such an attempt at evasion of responsibility on legal technicality or choice of forum. The latest expression is found in the decision of this Court in *Pope and Talbot Inc.* v. *Hawn et al.*, 74 S. Ct. 202, 346 U. S. 406.[9]

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[8] *Canadian Aviator, Limited* v. *U. S.*, 65 S. Ct. 639, 324 U. S. 215; *American Stevedores, Inc.* v. *Porello*, 67 S. Ct. 847, 330 U. S. 446;

Cosmopolitan Shipping Co., Inc. v. *McAllister*, 69 S. Ct. 1317, 337 U. S. 783 (p. 1321):

"The Jones Act was welfare legislation that created new rights in seamen for damages arising from maritime torts. As welfare legislation, this statute is entitled to a liberal construction to accomplish its beneficent purposes. * * * In considering similar legislation in other fields, we have concluded that Congress intended that the purposes of such enactments should not be restricted by common-law concepts of control * * *."

See also:

Thurston v. *U. S.*, 179 F. (2d) 514 (p. 515):

"(2) It is now long established that such legislation in favor of seamen must be construed strongly in their favor. * * * As welfare legislation, this statute is entitled to a liberal construction to accomplish its beneficent purposes."

[9] In *Pope & Talbot* v. *Hawn, supra*, the Court said:

"Even if Hawn were seeking to enforce a State-created remedy for this right, federal maritime law would be controlling. While States may sometimes supplement federal maritime policies [3] [3] See e.g., Just v. Chambers, 312 U. S. 383, 387-392, 1941 A. M. C. 430; Kelley v. Washington, 302 U. S. 1, 13, 1937

In a case involving this same Florida "non-claim" Statute (Sec. 733.16) this Court decided that the "non-claim" statute, since it deprived the United States of a remedy, had taken unto itself far too much power.[10].

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[9] (Continued)

A. M. C. 1490 (1938)], a State may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court. These principles have been frequently declared and we adhere to them. See e.g., Garrett v. Moore-McCormack Co., 317 U. S. 239, 243-246, 1942 A. M. C. 1645, and cases there cited. Caldarola v. Eckert, 332 U. S. 155, 1947 A. M. C. 847, does not support the contention that a State which undertakes to enforce federally created maritime rights can dilute claims fashioned by federal power, which is dominant in this field."

[10] See: *U. S.* v. *Summerlin*, 310 U. S. 414, wherein the Court said at page 417:

"If this were a statute merely determining the limits of the jurisdiction of a probate court and thus providing that the County Judge should have no jurisdiction to receive or pass upon claims not filed within the eight months, while leaving an opportunity to the United States otherwise to enforce its claim, the authority of the State to impose such a limitation upon its probate court might be conceded. But if the statute, as sustained by the state court, undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limits of state power. Davis, Director General of Railroads, v. Corona Coal Company, supra."

* * *

"[6] We hold that the state statute in this instance requiring claims to be filed within eight months cannot deprive the United States of its right to enforce its claim; that the United States still has its right of action against the administrator, even though the probate court is to be regarded as having no jurisdiction to receive a claim after the expiration of the specified period.

So far as the judgment goes beyond the question of the jurisdiction of the probate court and purports to adjudge that the claim of the United States is void as a claim against the estate of the decedent because of failure to comply with the statute, the judgment is reversed."

POINT II

Petitioners' hypothesis as to the applicability of the Jones Act is erroneou .

The right to administer an estate is quite a different matter from the power of a state to nullify benefits created by remedial Federal Laws.

Petitioners concede that rights exist under the Jones Act but contend that the remedy is cut off by Florida State Law (non-claim statute). The Court below interpreted Florida State Law to sustain respondent's right to recover.

Petitioners seem to have confused the right to recover damages under Federal Law with the power reserved by each State to distribute the proceeds of an estate or to administer its assets.

A Jones Act claim against a decedent's estate is a right created by Federal Law which cannot be extinguished or diluted by State Law or probate proceedings.

The cases cited by petitioners are not persuasive as they treat with questions involving estates free from claims existing by virtue of Federal Statutes, whereas the estate in question was not.

It would seem that the state had the exclusive power to administer and distribute only that portion of the estate, which was not subject to claim by authority of the right and remedy created by the Jones Act.

The question of administration of estates and distribution of assets under State Law is not involved, as such laws treat with proceeds of an estate after charges or liabilities against the estate under Federal Law are satisfied or disposed of.

The authorities cited in their brief by petitioners under their Question 1 (pp. 8 to 16) are not persuasive since they treat with cases predicated on general maritime law and common law liability which is not the subject matter of the issue at bar. As heretofore stated, the issue presented is a right created by Federal Statute wherein the remedy is provided for and the time for commencement of action fixed by the very provisions of said act.

The rights and remedies created by the Jones Act do not impinge upon "residual" State rights guaranteed by the Tenth Amendment as provision for remedial legislation involving Maritime causes comes squarely within the powers of Congress as contained in Art. I and Art. III of the Constitution (more fully set forth at pp. 1 and 2, *ante*).

POINT III

Petitioners' endeavor to circumvent or evade the provisions of American Law by the expediency of placing their vessel under foreign registry seems inimicable to the ends of justice.

As part of the development and interpretation of the Jones Act, our courts have long since decided that the Jones Act applies to all vessels owned by United States citizens regardless of what flag they place the vessel under.[11]

The financial condition of the petitioners is not involved in the issues presented.[12]

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[11] See *Gerradin* v. *United Fruit Co.*, 60 F. (2d) 927.

[12] We respectfully submit that the financial condition of the victim's and the tort-feasors' next of kin is not a proper question for consideration herein. The fact that Petitioners are recipients of the proceeds of various insurance, including $75,000 Hull Insurance and the impoverished condition of the victim's next of kin are economic and sociological problems and do not appear to be proper subjects of discussion herein, in spite of the fact that Petitioners have invited such argument at page 26 of their brief.

Conclusion

Petitioners seek to evade legal responsibility for their wrongful act which resulted in the death of the decedent by seeking to limit the right of recovery through the medium of the general maritime law, which is not involved herein.

The next of kin respectfully pray this Court to apply a liberal construction to the applicable law as the intent of remedial legislation is to grant substantial justice.

We respectfully pray for an affirmance of the decree by the Court below.

Respectfully submitted,

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